Supreme Court, U.S.
FILED
OCT 23 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-486

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

WALTER S. COHEN, et al.,

Petitioners,

v.

CAROLYN CLARK,

Respondent.

BRIEF OF CAROLYN CLARK IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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QUESTIONS PRESENTED

Whether, in the face of the plain and uncontested findings of fact, the lower courts correctly and consistently with this Court's prior decisions held that petitioners violated the procedural and substantive due process rights of a mildly retarded 44-year-old woman who was involuntarily confined for 29 years in a large state institution without any due process reviews, whose continued stay in the institution harmed her, and who could not receive there the minimally adequate treatment unanimously recommended by the treating professionals?

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Respondent Carolyn Clark respectfully requests that the Court deny the petition for writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 794 F.2d 79 (3d Cir. 1986). Pet. App. 97a.[1] The opinion of the district court is reported at 613 F.Supp. 684 (E.D. Pa. 1985). Pet. App. 3a.

STATEMENT OF THE CASE

Petitioners' Statement of the Case contains many factual inaccuracies, disregards the lower courts' consistent findings of fact, Pet. App. 98a-120a, and ignores many of the 183 "Agreed Stipulation of Facts," Pet. App. 221a-290a. Respondent provides the following summary of undisputed facts.

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[1]The designation "Pet. App." refers to the Appendix to the Petition for a Writ of Certiorari; "C.A. App." refers to the Appendix filed in the Court of Appeals; and "Stip." refers to the stipulation of facts at Pet. App. 221a, et seq.

Respondent Carolyn Clark is a 44-year-old mildly retarded woman. For twenty-nine years of her life, since she was fifteen years old, she was involuntarily confined to a state retardation institution in Laurelton, Pennsylvania, nearly four hours from her home in Philadelphia. The District Court noted that "[b]ut for the then well-intentioned intervention of the state, Ms. Clark could most likely have lived an average life," Pet. App. 215a.

Between 1956 and 1985, no court reviewed the necessity or propriety of Ms. Clark's commitment,[2] Pet. App. 247a, Stip. 68, despite the fact that she

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[2]The validity of Ms. Clark's 1956 ex parte commitment, when she received no notice, no counsel, no hearing and no opportunity to challenge either the necessity of commitment or the accuracy of the factual allegations in the petition, Pet. App. 99a, was not argued below and is not at issue in this Court.

repeatedly requested these reviews, Pet. App. 101a; despite the fact that an evaluation done by Laurelton professional staff shortly after her arrival in 1956 disclosed that the diagnosis on which her commitment was based was in error and that she was only mildly handicapped, Pet. App. 100a; despite the fact that she had been committed as a juvenile and reached the age of majority in 1962, Pet. App. 102a; despite the fact that the statute under which she had been committed was repealed in 1966, Pet. App. 101a; and despite the fact that a three-judge federal court in 1976 declared unconstitutional the commitment standard and ordered that more rigorous standards be applied in all involuntary commitments of mentally retarded persons, Pet. App. 176a.

At least since 1976 all professionals working with Ms. Clark, including petitioners' own staff, concluded that there was "no justifiable reason for keeping Carolyn Clark" in the institution, Pet App. 255a, Stip. 86, C. A. App. 266a. Even Laurelton's superintendent, Dr. Power, concluded that at least since 1976 Ms. Clark had "essentially plateaued out at what [the institution] can offer [her]," C. A. App. 266a, and the lower courts found that her "long, illegal confinement at Laurelton without proper treatment caused a deterioration in her ability to function . . .," Pet. App. 16a..

Since 1976, all professionals have agreed that Ms. Clark should be transferred to a facility where she could receive the minimally adequate training she required, Pet. App. 252a, Stip. 78,

treatment she could never receive at Laurelton, Pet. App. 36a-37a, C. A. App. 143a, 233a-235a. The professionals agreed that after a few years of training in the community, Carolyn Clark will live independently with no restraint on her liberty, C. A. App. 147a, 164a, 219a-221a.

At 44 years of age, Ms. Clark had spent all of her adult years in an institution, knowing she did not belong there, Pet. App. 259a, Stip. 99. At Laurelton, she could not make any of the decisions about her life that noninstitutionalized persons take for granted. She had no control over where and how she lived, whom she wanted to befriend, when to wake up and to sleep, and when and what to eat. She had no privacy, and her movements were strictly regulated, Pet. App. 110a-111a, 278a, Stip. 146-147.

She has been in a downward spiral for several years, Pet. App. 112a. In an attempt to control her frustration with her unnecessary confinement and to conform her behavior to that required by institutional life, petitioners subjected her to punishments, restraints and involuntary treatment including, inter alia, restriction to her building, seclusion, and confinement to a "restraint chair," Pet. App. 237a, Stip. 136, C. A. App. 140a, 180a, 189a, where her wrists and ankles were strapped, C. A. App. 190a.

The lower courts found that Ms. Clark would continue to suffer emotional harm as long as she remained at Laurelton, Pet. App. 113a. The Court of Appeals noted that Ms. Clark's institutionalization "caused such deterioration of her ability to cope in society that

she needs some form of supervised remediation if she is ever to be able to do so," Pet. App. 18a. Petitioners have admitted that "[d]ue to her long institutionalization she could not live independently at this time," Pet. App. 277a, Stip. 144, Pet. App. 17a-18a.

On the basis of these facts, both lower courts held that petitioners violated Carolyn Clark's procedural and substantive due process rights. The courts' remedy was exactly what petitioners' professionals had been continuously recommending for the past ten years -- a transfer to a facility where Ms. Clark's deterioration would be halted and where she could receive the minimally adequate training and treatment she needed in order to live without restraint.

REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW IS CONSISTENT WITH THE PREVIOUS DECISIONS OF THIS COURT AND DOES NOT RAISE ANY IMPORTANT QUESTIONS THAT WOULD JUSTIFY REVIEW BY THIS COURT

Initially, it is important to correct petitioners' exaggerated and misleading claims regarding the scope of this case and to emphasize what this case is not about:

- Contrary to petitioners' repeated assertions, this case does not raise the question of whether there is a constitutional right to treatment independent of a massive curtailment of liberty by the state. Carolyn Clark has been involuntarily and wrongfully confined by the state in an institution for most of her life. Petitioners have not to this day released her from their care and control and, therefore, have a constitutional duty to provide her with the

minimally adequate training and treatment unanimously recommended by their own professionals. The right to minimally adequate treatment that she asserts goes no farther than that required by the state's invasion of her liberty interest.

• This case does not involve the question of whether a court substituted its judgment for the professionals' judgment regarding treatment for Carolyn Clark. In the present case, for the past ten years the professionals unanimously agreed that she should not be institutionalized but should receive minimally adequate treatment in a different facility.

• Nor does the present case involve, as petitioners suggest, the question of whether a court has legal authority to order services in the "best," "optimal," or "least restrictive"

placement. Petitioners' professionals unanimously agreed that the treatment which Carolyn Clark requires to learn to be free of unnecessary restraint and to regain her liberty could not be provided in Laurelton but only in a community program.

• This case does not raise the issue of the right of all institutionalized mentally retarded persons to community services. It is not a class action, and Carolyn Clark is not typical of mentally retarded persons in institutions, Pet. App. 250a, Stip. 73. Rather, Carolyn Clark has been injured directly as a result of her long instititutionalization and, with minimally adequate training to remediate the deleterious effects of her institutionalization, will live independently with no state-imposed restraints on her liberty.

• Nor does this case present the choice, as asserted by petitioners, between institutionalization and no treatment at all. The existing treatment options made available by petitioners are broader than their false dichotomy suggests. At least since 1976, the state has funded the type of program that was repeatedly recommended for Ms. Clark by petitioners' own professionals, Pet. App. 240a, Stip. 49.

* * *

In fact, this case does not present any important issue (except, of course, for Carolyn Clark). Its result is entirely consistent with this Court's prior decisions. Since the lower courts correctly decided this case, broke no new ground and enunciated no new rules of law, there is no basis for the Supreme Court's review of this matter.

Both lower courts applied this Court's precedents in determining that petitioners had violated Ms. Clark's procedural and substantive due process rights. Petitioners would have this Court believe that the relief ordered was premised solely on petitioners' violations of Carolyn Clark's substantive due process rights. This is simply incorrect. Both lower courts based Ms. Clark's right to relief on the violations of both her substantive and procedural due process rights.

Petitioners have not raised the procedural due process issues in this Court, and indeed cannot do so successfully, given the precedents of this Court. Ms. Clark's commitment to and confinement at Laurelton unquestionably constituted "a massive curtailment of [her] liberty." Humphrey v. Cady, 405

U.S. 504, 509 (1972); O'Connor v. Donaldson, 422 U.S. 563, 575 (1975); Breed v. Jones, 421 U.S. 519, 530 (1975). Because of the magnitude of the state's continued intrusion on her liberty interests for twenty-nine years, Ms. Clark repeatedly requested and was entitled to receive effective periodic reviews of her commitment,[3] either by a court or by an authority that had the

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[3]Petitioners acknowledged that Ms. Clark's commitment should have been judicially reviewed. See e.g., Pet. App. 260a-268a, Stip. 101, 105-107, 112, 123-124. She did not have her day in court because neither state nor county defendants would pay the $132 court costs, C. A. App. 205a, Pet. App. 239a, Stip. 46, Pet. App. 271a, Stip. 131.

power to implement its decision.[4] Parham v. J. R., 442 U.S. 584, 607 (1979).

Periodic reviews were required to determine whether a reasonable relationship existed between the nature and duration of her commitment and the reasons, if any, that continued to justify her commitment. Jackson v. Indiana, 406 U.S. 715, 738 (1972). In the absence of such a relationship, the commitment could not constitutionally have continued. O'Connor v. Donaldson, 422 U.S. at 475. Both lower courts correctly held that the state did not afford Ms. Clark the constitutionally

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[4]The lower courts correctly rejected the state's contention that staff reviews resulting in recommendations for change that were never implemented were constitutionally sufficient to meet procedural due process mandates. Meaningless reviews do not rise to the level of the minimal procedures required under the due process clause. See, e.g., Goldberg v. Kelly, 397 U.S. 254 (1970).

required reviews and that, if it had, the nature and duration of her commitment would have been vastly different.[5]

The lower courts' holdings that petitioners violated Ms. Clark's procedural due process rights were based firmly on this Court's precedents. These procedural due process violations are sufficient to affirm the holding in this case, thus making review of the issue raised by petitioners not dispositive of the outcome of the case.

Even if the substantive due process issue were the only basis for the lower courts' decisions, there would be no basis for Supreme Court review. The

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[5]Had Ms. Clark received periodic reviews, her commitment to Laurelton would have terminated long before she gave up her child for adoption, underwent sterilization, and endured years of restraint, including shackling, Pet. App. 251a, Stip. 75, C. A. App. 190a.

lower courts straightforwardly and properly applied this Court's decision in Youngberg v. Romeo, 457 U.S. 307 (1982), to the facts of this case in granting relief to Carolyn Clark.

In Youngberg, this Court held that mentally retarded persons under state control are "entitled to minimally adequate training." 457 U.S. at 322.

> [A] court may properly start with the generalization that there is a right to minimally adequate training. The basic requirement of adequacy . . . may be stated as that training which is reasonable in light of the identifiable liberty interests and the circumstances of the case.

457 U.S. at 319 n. 25.

In the present case, Ms. Clark's freedom of movement and privacy were unnecessarily and significantly restricted during her years at Laurelton and particularly during the last ten

years. Even though she had the self-care skills and intellectual ability to live in the community, she was punished, restricted to her building, secluded in her room, and kept in a "restraint chair" where she was involuntarily shackled. Most critically, Ms. Clark did not need to be confined to an institution at all and could with training live independently, Pet. App. 253a, Stip. 82, Pet. App. 36a-37a, C. A. App. 147a, 164a, 219a-221a.

Under Youngberg, "courts must show deference to the judgment exercised by a qualified professional," 457 U.S. at 322. In the present case, the lower courts deferentially reviewed the professional judgments. All the professionals agreed that Ms. Clark could never receive the training at Laurelton that would enable her to be free of restraint, and they

unanimously recommended that she be transferred to a short-term, noninstitutionalized program that could provide such minimally adequate training. Petitioners offered no evidence to show why their own professionals' recommendations could not or should not be implemented.[6]

Had the lower courts not required the implementation of the professionals' recommended treatment, it would have been tantamount to condemning Carolyn Clark to a "life sentence" of institutionalization and inadequate treatment, with no possibility of ever regaining her independence.

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[6]This type of training was available and no more expensive than the undue restraint and inadequate treatment provided to Carolyn Clark at Laurelton, Pet. App. 212a.

Because the lower courts scrupulously applied this Court's mandates in Youngberg to the facts in Carolyn Clark's case, their decisions raise no new or important issues and do not justify the granting of a writ of certiorari.

II. THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH ANY OTHER CIRCUIT

Petitioners cite two cases for their contention that the lower courts' opinions conflict with other circuits, Society for Good Will to Retarded Children v. Cuomo, 737 F.2d 1239 (2d Cir. 1984), and Phillips v. Thompson, 715 F.2d 365 (7th Cir. 1983).

Both Society for Good Will to Retarded Children and Phillips involved broad assertions that all mentally retarded persons could receive better treatment in community programs. In contrast, the present case presents a

very fact-dependent order tailored to the specific injury suffered by, and treatment needs of, a single plaintiff.

In Society for Good Will to Retarded Children and Phillips, there were conflicts in professional judgment about recommended restraint and treatment for the plaintiffs. Carolyn Clark, however, has been detained in a state institution, where she could not receive the treatment she required, against the unanimous judgment of petitioners' own professionals. Each court applied the same standard to very different facts and each reached a result consistent with Youngberg.

All three circuits reviewed the respective injuries and constitutional violations under the Youngberg standard, and all three circuits determined

remedies that were appropriate to their respective cases.

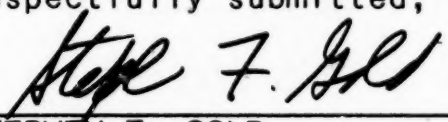
Additionally, this Court last term denied certiorari in Thomas S. v. Morrow, 781 F.2d 367 (4th Cir. 1986), cert. denied sub nom. Kirk v. Thomas S., 106 S.Ct. 1992 (1986), where the Circuit applied the Youngberg standard and affirmed an order requiring the treatment recommended by professionals for the individual plaintiff.

There is no conflict among the circuits on this issue, and thus no basis exists for granting a writ of certiorari in this case.

CONCLUSION

Because the instant case presents no important questions that would justify review by this Court and there is no conflict among the circuits, the petition for certiorari should be denied.

Respectfully submitted,



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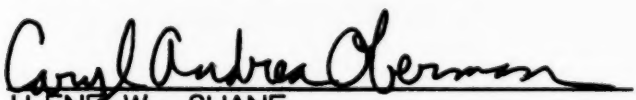

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